IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11cv69

SYNOVUS BANK,   )
)
      Plaintiff,   )
)
v.   )   <u>ORDER</u>
)
EMIL HURTAK and PARTRICIA   )
HURTAK,   )
)
      Defendants   )
_____)

Pending before the Court is Defendants' Motion to Amend Answer to Complaint [# 45]. Defendants seek leave of Court to amend their Answer in order to add factual allegations, to asset two fraud causes of action, and to remove a cause of action for aiding and abetting. Plaintiff consents to the amendment. The Court **GRANTS** Defendants' Motion to Amend Answer to Complaint [# 45].

I.   Analysis

Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleading after the expiration of the time periods specified in Rule 15(a)(1) "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Rule 15(a)(2) further provides that leave to amend shall be freely given "when justice so requires." Id. Absent a showing of undue delay, bad faith,

futility, or prejudice to the opposing party, a court should grant a party leave to amend. Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227 (1962); Equal Rights Center v. Niles Bolton Assocs., 602 F.3d 597.   The proposed amendment to Defendants' Answer would not result in undue delay or prejudice to Plaintiff, and the amendment is not futile or made in bad faith.   Accordingly, the Court **GRANTS** Defendants' Motion to Amend Answer to Complaint [# 45].

II.   Conclusion

The Court **GRANTS** Defendants' Motion to Amend Answer to Complaint [# 45]. Defendants shall file their Second Amended Answer by December 7, 2011. The Court **DENIES as moot** the Motion to Dismiss Amended Counterclaims [# 26], Motion to Strike Answer [# 32], and Motion to Dismiss Third Party Claims [# 36]. Plaintiff shall have twenty (20) days from the filing of the Second Amended Answer to answer or otherwise respond to any counterclaims or third-party claims asserted.

Signed: November 22, 2011

Dennis L. Howell
United States Magistrate Judge